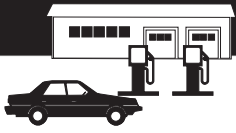


MOTOR FUELS UPDATE



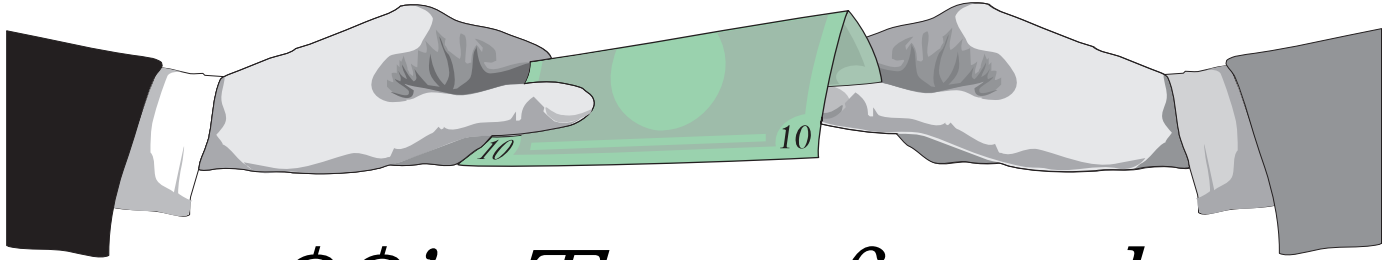
DEPARTMENT OF REVENUE



Volume 8, Edition 1

Quarterly

January 1998



\$\$'s Transferred

In 1985, Legislative Bill 273 established the Cash Bond Fund for motor vehicle fuel, aircraft fuel, and special fuel taxes, and provided the State the authority to require a surety bond on any filer where the State deemed a bond was necessary to protect the payment of taxes. The cash bond fund is financed through a .25% reduction in the commission allowed on your gasoline, diesel, and aircraft fuel tax returns. When recommended by the Nebraska Cash Bond Fund Committee and authorized by the State Tax Commissioner, delinquent charges are paid out of that fund. Once the fund reaches one percent of the total fuel tax collected the preceding year, the full commission is restored until such time as the fund falls below one-half of one percent of the total fuel tax collected during the preceding year.

During November 1997, the members of the Nebraska Cash Bond Fund Committee met and recommended the transfer of the existing balance of the fund to offset uncollectible balances in the amount of \$1,563,075.05. Almost all of these uncollectible balances resulted from bankruptcies.

In order to avoid additional delinquencies in the future, the Motor Fuels Division is taking a more active role in reviewing any business whose filings are delinquent or payment is made with insufficient funds checks. These filers are required to provide sufficient financial documentation to establish, to our satisfaction, that payment of fuel taxes is not in jeopardy. If it is determined the payment of taxes is in jeopardy, additional steps will be taken. The delinquent filer can be required to secure a

surety bond. The minimum amount of this surety bond is established by statute to be not less than three times the normal monthly liability of each tax program.

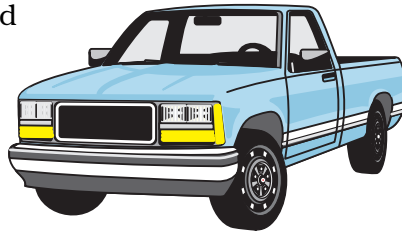
In order to avoid the costs of bonding, the licensee can elect to cancel their licenses and elect to purchase all fuel tax paid and file a retailer report. Licensees are also advised that, although they may be bonded, their continued failure to file returns in a timely manner and with proper funds, may result in suspension or revocation of their licenses.

I N S I D E

- ***Dyed Diesel Violations***
- ***Diesel Fuel Sales***
- ***Motor Fuels Tax Rate***

DYED DIESEL VIOLATIONS

Under both federal and state law, it is a violation to place dyed diesel fuel into the supply tank of a licensed motor vehicle. Over the past several years, owners or operators of licensed motor vehicles have received administrative assessments for operating a licensed motor vehicle that has dyed diesel in its supply tank. Each violation results in a \$1,000 penalty assessed by the Nebraska Department of Revenue and may result in an additional \$1,000 penalty being assessed by the Internal Revenue Service. The majority of violations are being found in diesel pickups and small trucks owned by Nebraska construction businesses, farmers and ranchers. Vehicle checks are being conducted throughout Nebraska.



of a letter which will spell out precisely what options and time frames are involved.

One distinction between the penalty issued by the the IRS and the Nebraska Department of

Revenue concerns the department's ability to issue a joint and several assessment when the vehicle is operated by someone other than the owner. Joint and several liability means that, although there is only a single penalty imposed for the violation, it is recoverable in total or in part from either or both parties.

If the violator agrees with the penalty, payment is remitted and the matter is closed. If they disagree with the penalty, a petition must be filed stating specifically why the penalty should not have been assessed. There are only two conditions under which this penalty may be set aside. Either the penalty was issued in error, meaning that there was not dyed diesel in the vehicle, or the placement of dyed diesel in the vehicle was outside the control of the owner or operator. These conditions may only be overcome by the violator placing sufficient factual documentation in our possession to support either of these contentions.

Failure to sustain either of these bases to set aside the penalty will result in denial of the petition.

While the question of whether or not the diesel has been dyed is a factual one, we have been presented with a wide range of reasons as to why the placement of the dyed fuel was outside the control of the registered owner. The following are examples of reasons we have deemed insufficient to abate the penalty:

- ✓ *I loaned the vehicle to my neighbor who must have placed the dyed fuel in the vehicle.*
- ✓ *My hired help placed the dyed fuel in the vehicle.*

These checks are normally conducted by Nebraska State Patrol Carrier Enforcement personnel; however, any state or federal law enforcement personnel may conduct this test. When the test is conducted, a sample of the diesel fuel is drawn from the vehicle. If the fuel contains visual evidence of dye, the sample is forwarded to a certified testing laboratory to chemically verify the presence of dye and determine its concentration. Upon verification, this test will become the basis for issuing penalties for the use of dyed diesel in a licensed motor vehicle.

The results of this test are shared between the federal and Nebraska authorities. At this point, the IRS may assess a penalty. The violator will be given certain appeal rights and time tables which they must follow. **Any questions regarding the federal penalty must be directed to the IRS.**

During the same period, a separate penalty assessment will be issued by the Nebraska Department of Revenue. While this penalty results from the same infraction, it is separate and distinct from the IRS penalty and must be treated accordingly. The notification of the penalty will be in the form

VIOLATIONS (CONT.)

- ✓ *I thought SME plated vehicles could use dyed diesel.*
- ✓ *I thought I could use dyed diesel when operating the licensed vehicle in a nonhighway use, such as in my fields or while grinding corn.*

It is important to remember that the law is very explicit in dealing with dyed diesel. Under both federal and Nebraska law, diesel fuel that is untaxed and intended solely for nonhighway purposes, contains red dye. **Both federal and Nebraska law provides any use of dyed diesel fuel in a licensed motor vehicle is a violation.** While you may be able to rationalize the use of dyed diesel in your licensed vehicle, it is still prohibited by law. There are no provisions allowing you to consume dyed fuel when the vehicle is used "off-road" and clear (tax-paid) fuel when used on the highway. Regardless of how elaborate your fuel tank system may be, it is still prohibited.

A final reminder, because the violator is faced with both federal and state penalties, it is imperative that they understand and follow the instructions included in the respective notices.

REMINDER — DIESEL FUEL SALES TO STATE AND LOCAL GOVERNMENTAL ENTITIES

State and local governmental entities including, school districts, and political subdivisions, may use dyed or undyed diesel in licensed motor vehicles. However, **all diesel used in licensed motor vehicles is subject to Nebraska Diesel Fuel Tax.**

LICENSED MOTOR VEHICLES

- Governmental entities using **dyed diesel** in licensed motor vehicles must purchase the dyed diesel without tax. They are responsible for **remitting the Nebraska Diesel Fuel Tax to the State of Nebraska** by filing a quarterly Nebraska Motor Fuels Consumer's Use Tax Return, Form 74.

***Note:** The selling price of dyed diesel for a school bus cannot include the Nebraska Diesel Fuel Tax.*

- Governmental entities using **undyed diesel** in licensed motor vehicles **must purchase tax-paid diesel fuel.**

***Note:** The selling price of undyed diesel for a school bus must include the Nebraska Diesel Fuel Tax.*

NON-LICENSED EQUIPMENT

- Any purchaser using **dyed diesel** in non-

licensed equipment **does not have** a Nebraska Diesel Fuel Tax liability.

- All purchasers using **undyed diesel** in non-licensed equipment **must purchase tax-paid diesel** and are eligible for a **tax refund** by completing a Nebraska Motor Fuels Refund Claim, Form 84.

Retailers of diesel fuel who have sales to state and local governmental entities need to be aware of the current tax liability on sales of both dyed and undyed diesel. You can assist both the State and your customers if you visit with these entities and ensure the proper tax is being collected or remitted to the State.

Please be aware, that this information pertains to sales to state and local governmental entities. Sales to federal government are not subject to Nebraska Diesel Fuel Tax. Concerns about federal fuel tax need to be addressed with the Internal Revenue Service.

Any questions concerning Nebraska Diesel Fuel Tax should be directed to the Nebraska Motor Fuels Division. Retailers or governmental entities should contact their account representatives or use our toll-free number

C A L E N D A R

MONTHLY

20	Form 80 , Nebraska Motor Fuels Carrier Report
	Form 81 , Nebraska Motor Vehicle Fuels Tax Return
	Form 82 , Nebraska Petroleum Release Remedial Action Fee Return
	Form 85 , Nebraska Aircraft Fuels Tax Return
	Form 86 , Nebraska Compressed Fuel Retailer Return
	Form 87 , Nebraska Motor Fuels Terminal Operator Report
	Form 89 , Nebraska Motor Fuels Retailer Report
	Form 91 , Nebraska Diesel Fuel Return

JANUARY

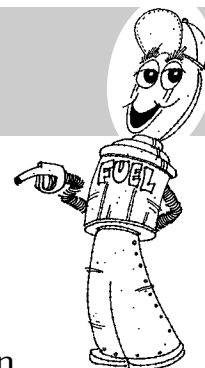
20	Form 74 , Nebraska Motor Fuels Consumer's Use Tax Return
	Form 86 , Nebraska Compressed Fuel Retailer Return

APRIL

20	Form 74 , Nebraska Motor Fuels Consumer's Use Tax Return
	Form 86 , Nebraska Compressed Fuel Retailer Return

MOTOR FUELS TAX RATE

The Nebraska motor fuels tax rate for **1998 first quarter** (January 1 through March 31, 1998) is **24.6 cents** per gallon.



FOR MOTOR FUELS TAXPAYER ASSISTANCE

Call your account representative or toll free 1-800-554-FUEL (1-800-554-3835).

Lincoln residents call 471-5730.

For *TT (Text Telephone), dial 1-800-382-9309.



*Telecommunication Device for the Deaf (TDD) is designated by the use of "TT," which is consistent with the Americans with Disabilities Act.

OR CONTACT:

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If you have received a duplicate mailing or would like to subscribe, please call 1-800-554-3835

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